

premises prior to termination of service where such wiring was installed and is owned by the broadband video service provider.⁵⁷⁶

205. We also sought comment on how to protect against signal leakage and maintain signal quality if subscribers were given pre-termination access to their cable inside wiring, and whether the Commission has the authority to promulgate a requirement of pre-termination access.⁵⁷⁷ We asked whether the Commission can and should create a presumption that the subscriber owns his or her cable inside wiring and, if so, what kind of showing would be necessary to overcome that presumption. We also sought comment on any statutory or constitutional impediments to creating such a presumption.⁵⁷⁸ Finally, we sought comment on whether and how the rules governing access should be harmonized in a world where the cable operator, the telephone company and others may be offering a variety of services over a single wire.⁵⁷⁹

206. Telephone companies, alternative video service providers and others support an extension of the telephone rules to the cable context,⁵⁸⁰ arguing that such deregulation would promote competition and customer choice,⁵⁸¹ and that efficient competition requires that all customers have access to and control of all inside wiring within their premises.⁵⁸²

⁵⁷⁶*Id.* at 2767-68.

⁵⁷⁷*Id.* at 2768.

⁵⁷⁸*Id.* at 2769-70.

⁵⁷⁹*Id.* at 2776.

⁵⁸⁰Ameritech Reply Comments at 10 (supporting extension of pro-competitive telephone inside wire rules to cable home wire); AT&T Comments at 8 (contending that the Commission should take steps to harmonize regulation of customer access to inside cable wiring with existing regulations governing customer access to inside telephone wiring); GTE Comments at 15 (cable inside wiring rules should be made consistent with regulations for telephony); Multimedia Development Comments at 10 (for cable wiring rules to work in the evolving market, parity with telephone wiring rules is necessary, to fullest extent possible); WCA Comments at 4-5 (urging use of telephone rules as a starting point for developing new inside wiring rules for broadband services, but broadband rules should depart from telephone rules where necessary to accommodate the practical differences between the "wiring topologies" used in each); Building Industry Consulting Comments at 4-5 (recommending single set of regulations for all wiring, including telecommunications and cable, and seeing no reason to change policy for inside telephone wire); Media Access/CFA Comments at 16 (supporting regulation of cable inside wiring under same model used for telephone inside wiring; rules allowing access to telephone inside wiring "have been a great success").

⁵⁸¹Ameritech Reply Comments at 2-3 (common rules would reduce confusion, promote competition and increase customer choice); New York DPS Reply Comments at 4 (guidelines for inside wiring should evolve to model used for telephony in order to maximize consumer options and establish parity).

⁵⁸²AT&T Comments at 8.

207. WCA argues that precedent in the telephone context supports the transfer of cable inside wiring to property owners on installation.⁵⁸³ WCA further argues that the Commission should adopt a rule providing that ownership of wiring not designated as "cable home wiring" in an MDU transfers automatically to the property owner upon installation. WCA argues that, to the extent owners have already acquired the wiring by state law or separate contracts with incumbent operators, such an action will have no impact.⁵⁸⁴ WCA also claims that the cost of cable inside wiring lies primarily in installation, and the salvage value of the wiring pales in comparison to the cost of removal and restoration of the premises. WCA argues that a rule allowing operators to recover all of their inside wiring costs by including those costs in rates for basic service to MDUs or entering into separate service contracts for maintenance fees where wire is transferred at no cost will address any takings issues.⁵⁸⁵

208. Multimedia Development argues that the only reason video service providers seek to protect their ownership of inside wiring is to protect their customer base against entry by competitors.⁵⁸⁶ Multimedia Development contends that we should require that title to cable inside wiring vest with the subscriber (or property owner for common wire in MDUs) upon installation, because the equipment has little or no residual value and is likely fully expensed for tax and regulatory purposes; Multimedia Development asserts that such a rule would not raise a takings issue if it were applied prospectively.⁵⁸⁷ Multimedia Development further argues that existing signal leakage rules adequately protect the public and there is no evidence that the proposed changes would undermine that protection. Multimedia Development notes that CATA admits that many subscribers routinely alter their cable home wiring, but offers no evidence of how such alteration has or will cause leakage problems.⁵⁸⁸

209. DIRECTV seeks a presumption that the subscriber owns his or her cable inside wiring, and that the collective MDU community owns its common inside wiring. DIRECTV asserts that a cable operator could rebut these presumptions by providing proof that it had not recovered the investment cost of the wiring and that the salvage value of the wiring exceeds its unrecovered investment cost. DIRECTV recommends that where the cable operator is able to rebut these presumptions, the subscriber or MDU community should have the right to purchase the inside wiring or obtain access thereto prior to termination of service, arguing that our rules should allow for more than one provider to use the same wires in order

⁵⁸³WCA Comments at 17-19. *But see* ICTA Comments at 33 (Section 624(i) grants authority to prescribe rules for disposition *after* termination, but there is no statutory authority to prescribe rules for disposition of wiring *prior* to termination; forcing cable operators to sell wiring before termination would constitute a taking, and Congress has not granted the Commission authority to exact a taking).

⁵⁸⁴WCA Comments at 15-16.

⁵⁸⁵*Id.* at 20.

⁵⁸⁶Multimedia Development Comments at 17 and n.30.

⁵⁸⁷*Id.* at 18 and n.31 (citing *FCC v. Florida Power Corp.*, 480 U.S. 245 (1987)).

⁵⁸⁸Multimedia Development Reply Comments at 9-10.

to facilitate competition.⁵⁸⁹ Alternatively, DIRECTV suggests that, where significant value remains in the wiring and the wiring is owned by the incumbent provider, a competitive service provider could be allowed to co-invest in the wiring by purchasing a portion of the unrecovered value from the incumbent.⁵⁹⁰

210. Property owners and managers claim that they have "no objection in principle" to allowing customers to install and maintain their own home wiring so long as the property owner retains the right to obtain access to the wiring and to control the type and placement of such wiring.⁵⁹¹ Furthermore, they contend that the building owner has, by contract, a superseding right to acquire or install any wiring. In any event, these commenters argue that tenants' rights to own, acquire or install wiring should be governed by state property law and the terms of the tenant's lease.⁵⁹²

211. In contrast, cable interests oppose granting subscribers the right to own or access their cable inside wiring prior to termination of service. These commenters argue that Section 624(i) does not provide for subscriber ownership of wiring before termination of service, and that the Commission otherwise lacks the statutory authority to impose it.⁵⁹³ These commenters also argue that requiring pre-termination access would constitute an impermissible "takings" under the Fifth Amendment,⁵⁹⁴ and would raise signal leakage concerns.⁵⁹⁵ NCTA and Time Warner argue that while the Commission lacks the

⁵⁸⁹DIRECTV Comments at 12. *But see* Marcus, et al., Reply Comments at 17-18 (DIRECTV's recommendation to share wires among providers is infeasible because it: (1) would require the addition of equipment that will substantially increase the likelihood of signal quality degradation and outages; (2) would destroy existing cable operators' ability to increase their channel and/or service offerings; and (3) assumes that only two providers will seek to provide broadband service).

⁵⁹⁰DIRECTV Comments at 12.

⁵⁹¹Building Owners, et al., Comments at 44.

⁵⁹²*Id.* at 44-45; *see also* Wireless Holdings Reply Comments at 1 (MDU building owners should be considered the relevant subscribers in rental MDUs and should be allowed to purchase cable inside wiring).

⁵⁹³*See, e.g.*, CATA Comments at 12-13 (suggestion that cable operators be required to sell inside wiring to customers before termination is without legal or economic justification or authority, and there is no support for it in the record; Congress gave the Commission authority to regulate the disposition of inside wiring in narrow circumstance where subscriber voluntarily terminates service, not authority to create regulations designed to promote termination or create new property rights); Marcus Cable, et al., Reply Comments at 19 (Section 624(i) authorizes FCC regulation of disposal of wiring in very narrow circumstances; the rule cannot apply unless a subscriber has elected to terminate service, and then it only applies to wiring within the subscriber's home); TCI Comments at 4 (Commission's sole source of statutory authority over cable inside wire flows from Section 624(i), which sought to ensure the customer's opportunity to purchase inside wire within the premises when cable service was voluntarily terminated); Time Warner Comments at 26-27 (Section 624(i) applies only post-termination); *see also* ICTA Comments at 33 (Commission lacks statutory authority to require pre-termination access).

⁵⁹⁴*See, e.g.*, Time Warner Comments at 28; ICTA Comments at 33; NCTA Reply Comments at 9-13.

⁵⁹⁵*See, e.g.*, CATA Comments at 11 (Commission should determine the likelihood of leakage if subscribers have unfettered access to the cable; signal leakage is more important now since cable operators are about to offer high speed data services which are particularly sensitive to impulse noise migrating into system from subscriber premises); NCTA Reply Comments at 9-10 and fn. 16 (citing 1992 House Report at 119 (Congress was well aware of practical

statutory authority to force cable operators to cede control of home wiring at the point of installation, it could adopt incentives for cable operators to voluntarily cede control of home wiring to consumers upon installation.⁵⁹⁶ Such incentives could include a relaxation of price regulation for inside wiring installation and maintenance fees and relaxation of signal quality and leakage regulations when an operator voluntarily allows pre-termination access.⁵⁹⁷

212. Cable interests also object to any analogy to our telephone inside wiring rules. CATA contends that analogies to telephone inside wiring rules are inapposite for cable wiring because access to telephone wiring was required in order to encourage competition for telephony CPE, while the Commission's goal for cable wiring is to encourage competition among video service providers.⁵⁹⁸ NCTA argues that Congress did not intend operators to be treated as common carriers with respect to internal cable installed in subscriber homes, and that requiring cable operators to give up their facilities is inconsistent with their non-common carrier status.⁵⁹⁹

213. In addition, Time Warner maintains that a rebuttable presumption of subscriber ownership constitutes an impermissible taking, because ownership of the wiring would automatically shift to the consumer without compensation to the cable operator.⁶⁰⁰ Time Warner contends that the 1992 Cable Act does not permit the promulgation of rules mandating that a cable operator yield ownership of home wiring prior to termination of service, even if just compensation is paid, and that Section 252(d)(2) of the 1996 Act presumes that the operator owns the wire over which it provides service, unless or until the operator cedes its ownership. According to Time Warner, a presumption that the subscriber owns the wiring will also discourage operators from installing wiring in the future.⁶⁰¹ Similarly, ICTA argues that an irrebuttable presumption of ownership would be unconstitutional. ICTA also argues that the Commission probably does not have authority to create a rebuttable presumption, but that operators could easily overcome such a presumption by ensuring that their contracts specify operator retention of ownership.

implications of allowing subscriber access to continuously-activated coaxial wire and did not provide for it; signal leakage is a serious problem if wiring is improperly installed and maintained)).

⁵⁹⁶NCTA Reply Comments at 9; Time Warner Comments at 29-30.

⁵⁹⁷Time Warner Comments at 29-30. Time Warner also sees the negotiation of "social contracts," such as the one they have negotiated with the Commission, as a possible way to achieve this goal. *Id.*

⁵⁹⁸CATA Comments at 10; *see also* Marcus Cable, et al., Reply Comments at 15-16 (no rationale for adopting telephone inside wire rules for cable wiring; telephone rules were adopted when telephone service was delivered over simple, uniform network, using equipment completely developed and regulated, while cable service is in a state of dynamic growth, and the imposition of rules for a "static technology" in the cable context would stifle technological growth); TCI Comments at 3-4 (nothing in the 1996 Act or its history contemplates harmonization of telephony and cable inside wiring rules; Congress specifically addressed and rejected regulatory harmony with respect to physical plant).

⁵⁹⁹NCTA Comments at 13 (citing 1992 House Report at 118).

⁶⁰⁰Time Warner Reply Comments at 43.

⁶⁰¹*Id.* at 42-44.

ICTA suggests that the Commission establish a "bright line" test of ownership, so there will be no question as to ownership at any point in time.⁶⁰²

214. Finally, Media Access/CFA strongly opposes proposals to deregulate inside wiring rates, arguing that deregulation would risk monopolization by existing service providers.⁶⁰³ Media Access/CFA claims that the 1992 Cable Act expressed a fundamental preference for the protection of subscribers, noting that the Act exempted cable systems from rate regulation only if those systems were subject to effective competition.⁶⁰⁴ Otherwise, rate regulation is required, including regulation of equipment used by subscribers to receive the basic tier.⁶⁰⁵ ICTA also opposes rate deregulation, arguing that it would probably not result in subscriber access prior to termination.⁶⁰⁶ ICTA claims that operators are unwilling to sell their wiring at any price in order to force owners to let the operator stay in the building, and that permitting operators to receive replacement cost is eminently fair because the wiring is worth less than its removal cost and the operator has ordinarily more than fully recouped its investment by the time of termination. ICTA also states that, in the alternative, the Commission should not deregulate the rates for which inside wiring can be sold for the period after the operator receives notice of termination.⁶⁰⁷

215. Time Warner also recommends that we continue to regulate prices for installation and maintenance of wiring if a cable operator retains ownership and control over that wiring upon installation. Prices should be deregulated if the operator chooses to cede control of the wiring to the subscriber on installation; this would foster a competitive installation and maintenance market, and would also eliminate the need to regulate inside wiring and maintenance prices.⁶⁰⁸

2. Discussion

216. We now establish a rule that will allow customers to provide and install their own cable home wiring within their premises, and to connect additional home wiring within their premises to the wiring installed and owned by the cable operator prior to termination of service. Under this rule, customers will be able to select who will install their home wiring (e.g., themselves, the cable operator or a commercial contractor). In addition, customers may connect additional wiring, splitters or other equipment to the cable operator's wiring, or redirect or reroute the home wiring, so long as no electronic or physical harm is caused to the cable system and the physical integrity of the cable operator's wiring

⁶⁰²ICTA Comments at 35-36.

⁶⁰³Media Access/CFA Comments at 18.

⁶⁰⁴*Id.* at 17 (citing 47 U.S.C. § 543(a)(2)).

⁶⁰⁵*Id.* at 17-18 (citing 47 U.S.C. 1992 Cable Act, §3(a) and Communications Act, § 623(b)(3)).

⁶⁰⁶ICTA Comments at 34.

⁶⁰⁷*Id.* at 34-35.

⁶⁰⁸Time Warner Comments at 30-31.

remains intact.⁶⁰⁹ Subscribers will not be permitted to physically cut, improperly terminate, substantially alter or otherwise destroy cable operator-owned inside wiring. To protect cable operators' systems from signal leakage, electronic and physical harm and other types of degradation, we will permit cable operators to require that any home wiring (including any passive splitters, connectors and other equipment used in the installation of home wiring) meets reasonable technical specifications, not to exceed the technical specifications of such equipment installed by the cable operator.⁶¹⁰ If, however, the subscriber's connection to, redirection of or rerouting of the home wiring causes electronic or physical harm to the cable system, the cable operator may impose additional technical specifications to eliminate such harm.

217. We believe that subscriber access to home wiring is necessary to enhance competition, which will result in lower and more reasonable rates for services such as the installation of additional outlets.⁶¹¹ Indeed, where competition is introduced, consumers benefit from lower prices, greater technological innovation, and additional consumer choice.

218. We take this action pursuant to Sections 4(i) and 303(r) of the Communications Act⁶¹² to further the purposes of Section 623⁶¹³ specifically and Title VI generally. The Commission has authority under Sections 4(i) and 303(r) to allow a subscriber to install and maintain its cable home wiring. As set forth above,⁶¹⁴ Section 4(i) grants the Commission the authority to make such rules as are necessary to carry out its functions, so long as the rules are not inconsistent with the Communications Act.⁶¹⁵ Section 303(r) grants the Commission similar authority.⁶¹⁶ The rule adopted here is necessary to effectuate the purpose of the Communications Act of promoting reasonable rates through the introduction of competition and is not inconsistent with any provision of the Act. Congress, in enacting Section 623(b) of the Communications Act, expressed a clear preference for competition as a method to reach reasonable rates.⁶¹⁷ Section 623(b) requires the Commission to ensure that the installation and lease charges for cable

⁶⁰⁹Such additional wiring or rerouting may not, however, be used to provide video service to other subscribers in nearby homes or other units in an MDU.

⁶¹⁰In the *Second Further Notice* below, we request comment on whether we should apply this rule to all MVPDs. See Section IV.B. below.

⁶¹¹See 1992 Senate Report at 23 (urging the Commission to adopt policies that will protect consumers against the imposition of unnecessary charges, including those for home wiring maintenance).

⁶¹²Communications Act, §§ 4(i) (Provisions relating to the Commission) and 303(r) (General Powers of Commission), 47 U.S.C. §§ 154(i) and 303(r).

⁶¹³Communications Act, § 623 (Regulation of Rates), 47 U.S.C. § 543.

⁶¹⁴See Section III.A.2.c.

⁶¹⁵47 U.S.C. § 154(i).

⁶¹⁶47 U.S.C. § 303(r) (the Commission has the authority to "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act . . .").

⁶¹⁷47 U.S.C. § 543.